

House File 415 - Introduced

HOUSE FILE 415

BY SWAIM

A BILL FOR

1 An Act relating to removal of a guardian in a termination of
2 parental rights proceeding.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.118, subsection 1, Code 2011, is
2 amended to read as follows:

3 1. Upon application of an interested party, upon the
4 filing of a petition by an interested party in accordance with
5 subsection 1A, or upon the court's own motion, the court having
6 jurisdiction of the child may, after notice to the parties and
7 a hearing, remove a court-appointed guardian and appoint a
8 guardian in accordance with the provisions of section 232.117,
9 subsection 3.

10 Sec. 2. Section 232.118, Code 2011, is amended by adding the
11 following new subsections:

12 NEW SUBSECTION. 1A. If a petition is filed by an interested
13 party asking for removal of a court-appointed guardian and
14 appointment of a guardian in accordance with the provisions
15 of section 232.117, subsection 3, the petition shall state or
16 attach the following:

17 a. The name, residence, and domicile of any guardian or
18 custodian of the child and the name, residence, and domicile of
19 the child's guardian ad litem.

20 b. The name, residence, and domicile of the petitioner, and
21 the date or expected date on which any adoption proceedings are
22 expected to commence.

23 c. The existence of any criminal conviction or deferred
24 judgment for an offense other than a simple misdemeanor under
25 a law of any state against the guardian or custodian, and
26 the existence of any founded child abuse report in which the
27 guardian or custodian is named.

28 d. A description and estimate of the value of any property
29 owned by or held for the child.

30 e. A preplacement investigation report that has been
31 prepared concerning the child.

32 f. Other relevant information.

33 NEW SUBSECTION. 1B. If the child's guardian is the
34 department or an agency appointed under section 232.117,
35 subsection 3, paragraph "a" or "b", and the court finds by

1 clear and convincing evidence that removal of the guardian is
2 in the child's best interest, the court shall order removal of
3 the guardian and appoint a replacement guardian under section
4 232.117, subsection 3. However, the court shall not order the
5 removal over a formal objection to the removal filed by the
6 child's attorney or guardian ad litem unless the court finds by
7 a preponderance of the evidence that removal of the guardian
8 is in the child's best interest. The factors considered by
9 the court in determining the child's best interest under this
10 subsection may include but are not limited to any of the
11 following information:

12 *a.* The existence of a significant relationship between the
13 child and the petitioner.

14 *b.* The special needs of the child and the petitioner's
15 ability to meet those needs.

16 *c.* The potential effects on the child if the guardian is
17 removed and a replacement guardian is appointed.

18 EXPLANATION

19 This bill relates to the grounds for removal of a child's
20 guardian in a termination of parental rights proceeding under
21 Code chapter 232, the juvenile justice code.

22 Under current law when termination of parental rights over
23 a child is ordered under Code section 232.117, the court must
24 transfer guardianship and custody to one of the following: the
25 department of human services; a child-placing agency or other
26 suitable private agency, facility, or institution which is
27 licensed or otherwise authorized by law to receive and provide
28 care for the child; or a parent who does not have physical care
29 of the child, other relative, or other suitable person.

30 Current law under Code section 232.118 allows the juvenile
31 court with jurisdiction over the child to order removal of a
32 guardian upon application of an interested party or upon the
33 court's own motion, after notice to the parties and a hearing.
34 The bill allows an interested party to file a petition
35 containing information specified in the bill.

1 A recent Iowa court of appeals decision indicates that a
2 court's decision on removal of a child's guardian in such cases
3 must be based upon proof of unreasonable actions on the part of
4 the guardian. The bill provides that if the child's guardian
5 is the department or an agency, and the court finds by clear
6 and convincing evidence that removal of the guardian is in the
7 child's best interest, the court must order removal of the
8 guardian and appoint a replacement guardian under Code section
9 232.117, subsection 3. However, the court is prohibited from
10 ordering the removal over a formal objection to the removal
11 filed by the child's attorney or guardian ad litem unless the
12 court finds by a preponderance of the evidence that removal of
13 the guardian is in the child's best interest. The bill lists
14 various factors concerning the child and the petitioner that
15 may be considered by the court.